

Introduction: Great Lakes: Emerging Issues for Freshwater Resources - Twenty-Third Annual DePaul Law Review Symposium

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INTRODUCTION: GREAT LAKES: EMERGING ISSUES FOR FRESHWATER RESOURCES

*Stephanie Mulcahy**

“For many of us, clean water is so plentiful and readily available that we rarely, if ever, pause to consider what life would be like without it.”¹

The Great Lakes are a vital part of our daily lives. Not only do they provide fresh drinking water for millions, but industry, shipping, and agriculture rely heavily on the Lakes as a resource. People are further drawn to the Great Lakes for their beauty, beaches, and recreational activities. Unfortunately, with this importance comes conflict over who has a right to the water, what can be put into that water and how much, and the best way to protect such a valuable commodity and environmentally significant body of water. Some of these issues have been discussed and debated for years whereas other concerns are just starting to emerge.

The 23rd annual DePaul Law Review Symposium: *Great Lakes: Emerging Issues for Freshwater Resources* sought to address these emerging legal issues and policy concerns facing our Great Lakes today. The Chicagoland community came together for a day-long discussion where academics, practicing attorneys, and policy experts explained the current threats facing the Great Lakes. The various speakers talked about issues such as climate change, invasive species, and pharmaceutical contamination, and then concluded by addressing how conservation, infrastructure, and sustainability initiatives coupled with the current body of law can help protect this resource.

Professor Noah Hall presented a background on water law as well as spoke on one of our panels. In his article, *Law and Governance of the Great Lakes*, Professor Noah D. Hall along with Benjamin C. Houston outline the fundamental structure that establishes and limits

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1. Marcus Samuelsson, *Eat Out, Drink Up and Save Lives*, HUFFINGTON POST (Mar. 22, 2010, 3:50 AM), http://www.huffingtonpost.com/marcus-samuelsson/eat-out-drink-up-and-save_b_507546.html.

federal, state, and tribal governmental powers surrounding the Great Lakes. Specifically, the article provides a baseline for understanding how federal power used to manage and protect the Lakes intersects with state regulation, both through the Great Lakes Water Quality Agreement and the Clean Water Act. Hall and Houston argue that this link between state sovereignty and interstate governance continues to shape Great Lakes law and policy. The article further examines how factors such as state formation, state boundaries, and the commerce clause have played a role in the development of Great Lakes governance as well as the Great Lakes Compact. Hall and Houston also explore how ownership through both property rights and the Public Trust Doctrine steers local water use decisions. Hall and Houston maintain that, although new issues emerge, the fundamental structure governing the Lakes will likely remain constant. They conclude by stating that rather than a governance solution for the Lakes, we should use all available powers and authorities as issues warrant.

In *Food and Virtual Water in the Great Lakes States*, Professor Melissa K. Scanlan and Professor Jenny Kehl examine the impact of agricultural output through “virtual water,” specifically focusing on the export of water in the Great Lakes region. The article defines this unique idea of “virtual water” as the total amount of water used to produce a product such as food. Because the amount taken from the Lakes is substantial, Scanlan and Kehl maintain that this “virtual water” should be considered as a factor in water management. Using the Public Trust Doctrine as the foundation for water management, Scanlan and Kehl maintain that the trustees have a duty to research the amount of water being removed from the basin and the impact of the removal, similar to the water loss related to the Chicago River diversion. Additionally, Scanlan and Kehl point out that, although the Compact provides uniform standards for consumptive use, it does not include virtual water. They further analyze water policy and explore how the laws should evolve to promote food security through sustainable measures in food production. They maintain that the magnitude of water being exported out of the Great Lakes through virtual water is significant and thus deserves further review. Professor Scanlan and Kehl argue that clarifying regulations are essential to measuring the virtual water as well as additional legislation designed specifically to protect the movement of water from agriculture.

I would like to thank all of our speakers and moderators who made the 23rd Annual Symposium such a memorable experience: Keynote Speaker Professor Noah Hall (Wayne State University Law School), Joel Brammeier (Alliance for the Great Lakes), Howard A. Learner

(Environmental Law & Policy Center), Professor Rebecca Klaper (University of Wisconsin-Milwaukee), Professor Melissa Scanlan (University of Wisconsin Law School), Henry Henderson (NRDC), David Ullrich (Great Lakes and St. Lawrence Cities Initiative), Bert Frey (EPA Office of Regional Counsel, Region 5), Brent O. Denzin, (Ancel, Glink, P.C), Professor Barry Kellman (DePaul University College of Law), and Professor Joshua D. Sarnoff (DePaul University College of Law). I would also like to thank the DePaul Law Review for putting this issue together and DePaul University for making the event such a success.

